

## ARKANSAS COURT OF APPEALS

DIVISION I

No. CA 08-549

KIMBERLY GARRETT ROGERS and  
RAYMOND L. GARRETT,  
APPELLANTS

V.

ARKANSAS DEPT. OF HEALTH &  
HUMAN SERVICES and  
MINOR CHILDREN,  
APPELLEES

Opinion Delivered 12 NOVEMBER 2008

APPEAL FROM THE RANDOLPH  
COUNTY CIRCUIT COURT  
[NO. JV-2002-42]

THE HONORABLE KEVIN KING,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**D.P. MARSHALL JR., Judge**

The Randolph County Circuit Court terminated Kimberly Rogers's and Raymond Garrett's parental rights to their three children, C.G., A.G., and N.G. The parents' lawyer has filed a motion to withdraw as counsel and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004) and our Rule 4-3(j)(1). The brief lists each adverse ruling made at the termination hearing and explains why each provides no meritorious ground for reversal. The clerk of this court sent Rogers and Garrett a copy of their lawyer's brief, informing each of them that they had the right to file pro se points for reversal under Rule 4-3(j)(2). Neither parent filed any points. We agree that this appeal lacks any merit.

We first address the circuit court's decision to terminate Rogers's and Garrett's parental rights. The court found a substantial likelihood that all three children would be adopted and that it was contrary to their best interest, health, safety, and welfare to return them to Rogers's or Garrett's custody. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2008). The circuit court also found several statutory grounds for termination. As one ground, the court found the following circumstances: that other issues arose after DHS filed its initial dependency-neglect petition; that those issues demonstrated that returning the children to their parents' custody was contrary to the children's health, safety, or welfare; and that, despite DHS's offer of services, Garrett and Rogers had manifested the incapacity or indifference to remedy those issues or to rehabilitate the circumstances that kept the children from being returned to their parents' custody. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a).

The evidence presented at the hearing supported this ground. At that time, Garrett was serving a thirty-year prison sentence for raping two of his other children, not parties to this case. And Garrett committed those acts while C.G., A.G., and N.G. were in his custody. Rogers failed to separate herself from her new husband after he sexually abused A.G. She also failed to maintain adequate and stable housing, attend counseling regularly, or maintain contact with DHS. We see no clear error in the circuit court's decision to terminate Rogers's and Garrett's parental rights. *Yarborough*

*v. Arkansas Department of Human Services*, 96 Ark. App. 247, 253, 240 S.W.3d 626, 630 (2006).

During the termination hearing Garrett requested, as an alternative to termination, that the children be placed with their paternal aunt. The court rejected this option. We likewise see no error in the court's refusal to place the children with the aunt. Her home study was not approved by DHS, she had numerous medical problems, and she admitted trying to kill her first husband because he was abusive.

The attorney's brief addresses four other adverse rulings during the termination hearing. First, both parents moved for a continuance at the beginning of the hearing. The court denied those motions because the children had, by then, been in and out of their parents' homes for about five years, and the case therefore needed to be resolved. We see no abuse of the court's broad discretion here. *Smith v. Arkansas Department of Human Services*, 93 Ark. App. 395, 401, 219 S.W.3d 705, 708 (2005). Second, just before the hearing both parents requested that the judge recuse because he may have been prejudiced by information he had learned in earlier proceedings. The court likewise did not abuse its discretion in rejecting this request. *Roe v. Dietrich*, 310 Ark. 54, 59, 835 S.W.2d 289, 292 (1992). Recusal is not required when a judge has obtained knowledge of the facts of the case from prior proceedings in the same case. *Ibid.* Third, the circuit court sustained an objection to Garrett testifying about

Rogers attending parenting classes unless Garrett had personal knowledge about her attendance. This ruling was correct. A witness may not testify about a matter unless he has personal knowledge of it. Ark. R. Evid. 602. Finally, Rogers's attorney objected when the DHS attorney asked A.G.'s counselor to give an opinion about whether parenting issues could have led to A.G.'s slowed intellectual development. Rogers's lawyer argued that the counselor had not been qualified as an expert in that area. The DHS attorney and the attorney ad litem then voir dired the counselor, after which Rogers's lawyer withdrew this objection.

We therefore agree that this appeal is wholly without merit. We grant counsel's motion to withdraw and affirm the termination order.

ROBBINS and VAUGHT, JJ., agree.